



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/030,692

01/14/2002

Hans Rudolf Muller

EPROV 17

8615

23599

7590

08/17/2009

MILLEN, WHITE, ZELANO & BRANIGAN, P.C.

2200 CLARENDON BLVD.

SUITE 1400

ARLINGTON, VA 22201

EXAMINER

BERCH, MARK L

ART UNIT

PAPER NUMBER

1624

NOTIFICATION DATE

DELIVERY MODE

08/17/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@mwzb.com

### DETAILED ACTION

The amendment filed under 37 CFR 1.116 in reply to the final rejection has been considered but is not deemed to place the application in condition for allowance and will not be entered because: The proposed amendment raises new issues that would require further consideration and/or search.

The new language of  $-\text{PO}_3(\text{M}_1)_2$  is new matter. Applicants state that such a choice is “clear from the application” as a choice for a substituent on R4, etc, but present no evidence at all. There is no reason at all that this acidic substituent could not have been  $-\text{AsO}_3(\text{M}_1)$  just as well. The fact that P appears elsewhere in the specification in a totally different context has nothing to do with this substituent. In fact, it could just as well have been  $-\text{CO}_3(\text{M}_1)$  for that matter --- the per-acid or salt thereof. Moreover, even if the  $-\text{PO}_3$  part is considered correct, there is no particular reason for assuming that the missing piece was M1. Maybe the missing piece was just H, i.e. the original language of  $-\text{PO}_3(\text{M}_1)$  conveys the idea that only a mono salt was intended, so that the actual correct form was  $-\text{PO}_3\text{H}(\text{M}_1)$ . Or perhaps the missing group was R, an esterifying group.

The point about the variable “n” is withdrawn.

The traverse on point 6 is not persuasive. If R19 and R21 are combined, one gets only a chain. For example, R19-R21 are together  $(\text{CH}_2)_3$ . That constitutes a chain. It is only when this chain is combined with the carbon to which R21 is attached, and the atom to which R19 is attached, does one get a ring. In other words, the term “R19” means only the substituent itself, not the substituent and the carbon to which it is attached.

The amendment, if entered, would have taken care of points 1-3.

Art Unit: 1624

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark L. Berch whose telephone number is 571-272-0663.

The examiner can normally be reached on M-F 7:15 - 3:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James O. Wilson can be reached on (571)272-0661. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark L. Berch/  
Primary Examiner, Art Unit 1624

8/13/2009